

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DANIEL KLEEBERG, LISA STEIN,
and AUDREY HAYS,

Plaintiffs,

vs.

Civil Action No. 16-CV-9517(LAK)(KDP)

LESTER EBER, ALEXBAY, LLC f/k/a
LESTER EBER, LLC., ELLIOT W. GUMAER,
JR. and WENDY EBER,

Defendants,

and

EBER BROS. & CO., INC., EBER
BROS. WINE AND LIQUOR
CORP., EBER BROS. WINE
& LIQUOR METRO, INC., EBER
CONNECTICUT, LLC, EBER-RHODE
ISLAND, LLC, EBER BROS. ACQUISITION
CORP, EBER-METRO, LLC, and SLOCUM &
SONS OF MAINE, INC.,

Nominal Defendants.

DECLARATION OF SUMNER PEARSALL, CPA

I, **SUMNER T. PEARSALL, CPA**, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge:

1. I am a Certified Public Accountant and have been the tax preparer for Eber Bros. Wine and Liquor Metro, Inc. (“Eber Metro”), and Eber-Connecticut, LLC (“Eber-CT”) for more than 15 years. I am also Wendy Eber’s personal tax preparer.

I. Eber-CT and Eber Metro

2. Eber Metro is a Subchapter C Corporation and thus pays income taxes on its taxable income.

3. Eber-CT is a pass-through entity for income tax purposes. Its taxable income (if any) is generally allocated on a pro rata basis to its members based on their membership interest, and its members are required to report their share of such taxable income on their own tax returns and as such pay income taxes on such income themselves. This general rule is subject to the provisions of Eber-CT’s LLC agreement (the “LLC Agreement”) that otherwise govern allocation of taxable income among its members.

4. Eber-CT’s membership interest is owned among its members in the following percentages: Eber Metro – 79%; Eder-Goodman, LLC – 15%; Wendy Eber - 6%.

II. Eber-CT Tax Year 2020 and Eber Metro’s and Wendy Eber’s Tax Obligations

5. I prepared the income tax return for Eber-CT for its 2020 tax year (6/1/20 to 5/31/21). I prepared the return based on post audit trial balance of Eber-CT and Eber-CT’s prior returns.

6. I also prepared the income tax return for Eber Metro for its 2020 tax year (6/1/20 to 5/31/21). I prepared the return based on the Eber-CT tax return, records of disbursements of Eber Metro, and Eber Metro's prior returns.

7. Eber CT had federal taxable income for its 2020 tax year (6/1/20 through 5/31/21) in the amount of [REDACTED]. Of that amount, [REDACTED] was allocable to Eber Metro, [REDACTED] was allocable to Wendy Eber, and [REDACTED] was allocable to Eder-Goodman LLC. [REDACTED]

8. Eber Metro had [REDACTED] federal tax due for its 2020 tax year (6/1/20 through 5/31/21), as [REDACTED].

9. Wendy Eber owed federal and New York State income taxes in respect of income allocated to her from Eber-CT for its 2020 tax year. She paid estimated taxes on her 2021 federal and New York state income tax returns in respect of her allocation of income for Eber-CT's 2020 tax year in the sum of [REDACTED].

III. Eber-CT Tax Year 2021 and Eber Metro's and Wendy Eber's Tax Obligations

10. I have reviewed the trial pre-audit balance of Eber-CT and the records of Eber Metro for their 2021 tax year (6/1/21 through 5/31/22) in order to determine Eber Metro's and Wendy Eber's estimated income tax obligations.

11. Eber CT had federal taxable income for its 2021 tax year in the amount of [REDACTED]. Of that amount and per the terms of the LLC Agreement, [REDACTED] is allocable to Eber Metro, [REDACTED] is allocable to Wendy Eber, and [REDACTED] is allocable to Eder Goodman, LLC.

12. Eber-CT's taxable income allocable to Eber Metro for its 2021 tax year is reduced by interest and other deductions, New York state and Connecticut state tax, and federal carry forward net operating losses to [REDACTED], resulting in estimated tax at the federal rate (21%) of approximately [REDACTED]. Such federal tax is due on or before September 15, 2022. Any portion of such tax unpaid after September 15, 2022 will accrue interest until the date of payment in full at a rate determined quarterly, calculated by adding 500 basis points to the applicable federal short-term rate, compounding daily. Any unpaid tax will also accrue a penalty equal to one-half of one percent for each month, or part of a month, up to a maximum of 25%, of the amount of tax that remains unpaid from the due date of the return until the tax is paid in full.

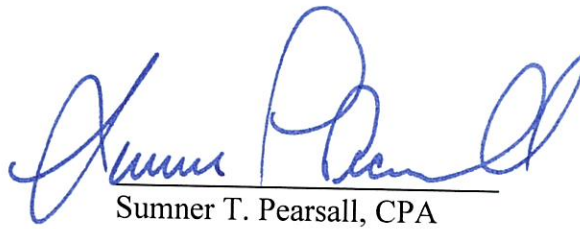
13. Wendy Eber's federal and New York state aggregate tax obligation in respect of her pro rata share of Eber-CT's taxable income allocated to her for Eber-CT's 2021 tax year is estimated be [REDACTED]. It should be paid on a quarterly basis.

IV. Distributions Requested to Meet Tax Obligations

14. In light of the foregoing and per the provisions of the LLC Agreement which require tax distributions to be made on a basis that is pro-rata to ownership, Eber-CT should make the following tax distributions to Eber Metro, Eder-Goodman, and Wendy Eber:

- a. To Eber Metro in the amount of [REDACTED] with the caveat that Eber Metro may only use the proceeds of such tax distributions to pay federal and New York state income tax, and that any distribution over that amount is subject to the Order and Preliminary Injunction, dated October 14, 2021;
- b. To Eder-Goodman LLC in the amount of [REDACTED] and,
- c. To Wendy Eber in the amount of [REDACTED]

September 9, 2022



Sumner T. Pearsall, CPA